

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

PLAINTIFFS' MOTION IN LIMINE NO. 2

Plaintiffs respectfully move this Honorable Court to preclude Defendant Michael Ashley from calling Rabbi Yaakov Sachs and Rabbi Avraham Lehr at trial. Ashley disclosed these two individuals for the first time in his pre-trial order. *See* D.E. 297 at 10. Ashley intends to call each of these persons to testify that they were “holding religious services at Lend America on a daily basis for about 3 years.” *Id.* This action concerns Defendants’ compensation practices. That Ashley has certain religious beliefs, attends religious services, or arranged to have services conducted at Lend America has no bearing on any fact that “is of consequence to the determination of the action.” Fed.R.Evid.401. Irrelevant evidence is inadmissible. Fed.R.Evid. 402. Alternatively, these witnesses should be precluded from testifying at trial because they were never disclosed in discovery. *E.g., D'Arpa v. Runway Towing Corp.*, 2013 WL 3010810, at *10 (E.D.N.Y. June 18, 2013) (“[i]f a party fails to provide information ... as required by Rule 26(a),” a court may preclude this information “on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless .”)

Dated: July 15, 2013

Respectfully Submitted,

/s/ James B. Zouras

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFFS'** **MOTION IN LIMINE NO. 2** was served upon the following parties via this Court's ECF filing system, this 15th day of July, 2013:

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And, electronically mailed the above mentioned on this 15th day of July, 2013 to the following address:

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/s/ James B. Zouras
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